

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

STATE OF NEBRASKA, et rel,
MICHAEL J LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY,
PLAINTIFF

FILED

DEPARTMENT OF JUSTICE

MAY 24 2007

'07 MAY 22 11:18

STATE OF NEBRASKA

ADAMS COUNTY NOTICE OF JUDGMENT
CLERK OF DIST. COURT CI 07-334

VS

DUTTON-LAINSON COMPANY,
DEFENDANT

You are hereby notified that a judgment was rendered in the above-entitled case on
May 22, 2007.



BY

CLERK OF THE DISTRICT COURT

Leona L Barget
DEPUTY

STATE OF NEBRASKA)

COUNTY OF ADAMS)

I hereby certify that on May 22, 2007 I sent a copy of the foregoing notice via
U.S. MAIL, postage prepaid, to each of the following:

JON C BRUNING
2115 STATE CAPITOL BUILDING
LINCOLN NE 68509

DAVID H FISHER
P O BOX 1044
HASTINGS NE 68902



BY

CLERK OF THE DISTRICT COURT

Leona L Barget
DEPUTY

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

DUTTON-LAINSON COMPANY, a
corporation authorized to do business in
Nebraska,

Defendant.

) FILED Case No. CS07-334
)
)
) '07) MAY 22 10 58
)
) ADAMS COUNTY CLERK OF DIST. COURT
) **CONSENT DECREE**

Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the defendant, Dutton-Lainson Company (hereinafter "Dutton-Lainson" or "Defendant"), through its counsel, David H. Fisher, and each party having consented to the making and entering of this Consent Decree without trial, the Court finds that the Consent Decree should be and hereby is entered.

IT IS THEREFORE ORDERED AND DECREED:

1. The Court has jurisdiction of the parties and the subject matter of this action. The Complaint herein sets forth justiciable causes of action against the defendant.

2. NDEQ alleges in its complaint that beginning on or around May 20, 2005 and continuing on twenty-one separate occasions thereafter until November 18, 2005, Dutton-Lainson failed to comply with Condition XXXI(G) of its air permit in that it failed to ensure that the chilled air blanket temperature measured at the center of the air blanket during idling mode did not exceeds 57° F, in violation of Neb. Rev. Stat. §81-1506(4)(b) (Cum.

Supp. 2006).

3. NDEQ further alleges that Defendant is therefore subject to a civil penalty as provided in Neb. Rev. Stat. §81-1508.02(2) (Reissue 1999).

4. The parties agree that settlement of these matters is in the public interest and that entry of this consent decree is the most appropriate means of resolving their dispute. Defendant, without admitting any allegations of the complaint, agrees to the form and entry of this consent decree for purposes of settlement only.

5. The parties agree that this consent decree shall be in full satisfaction of all claims alleged in the complaint and arising out of the same transactions or occurrences asserted therein, provided that such claims were known to the State of Nebraska as of the date of the filing of this consent decree.

6. IT IS THEREFORE ORDERED that Defendant shall pay to the Clerk of the District Court of Adams County a civil penalty in the sum of twenty-five thousand dollars (\$25,000.00) pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs in the amount of seventy-nine dollars (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

a. \$10,000 (Ten thousand dollars) of said penalty and the costs of the action are to be paid within ten (10) days of the approval of this Consent Decree by the District Court.

b. The remaining civil penalty of \$15,000 (Fifteen thousand dollars) will be due and owing six months after the approval of this Consent Decree by the District Court. In the event that Defendant maintains compliance with all obligations

and provisions included in applicable statutes, regulations, and its air permit during the six-month period following the Court's approval of this Consent Decree, the remaining \$15,000 (Fifteen thousand dollars) of civil penalties will be waived.

c. To qualify for the \$15,000 waiver of civil penalties as stated in paragraph (6)(b), Defendant shall file a showing with the Court within (30) thirty days of the due date of the civil penalties establishing that it has maintained compliance as required. If Defendant receives a Notice of Violation from Plaintiff or is a party to legal action disputing compliance with the statutes and regulatory provisions in paragraph (6)(b) during the relevant time period, the Court may stay determination of this waiver provision pending ongoing enforcement proceedings.

7. IT IS FURTHER ORDERED that Defendant shall pay, as a Supplemental Environmental Project, the sum of \$25,000 (Twenty-five thousand dollars) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General.

8. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

9. The undersigned consent without further notice to the form and entry of the foregoing Consent Decree.

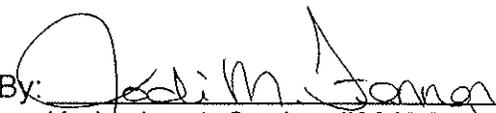
Dated this 22 day of ~~March~~ ^{May}, 2007.

BY THE COURT:

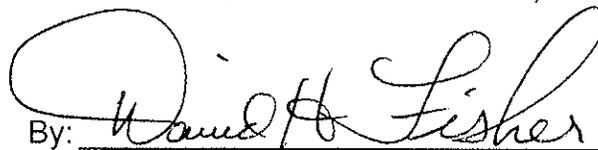

DISTRICT JUDGE

STATE OF NEBRASKA ex rel.,
MICHAEL J. LINDER, DIRECTOR,
Department of Environmental
Quality, Plaintiff,

By: JON C. BRUNING #20351
Attorney General

By: 
~~Katharine J. Spohn, #22979~~ Judith M. Jenner #20038
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682
Attorneys for Plaintiff

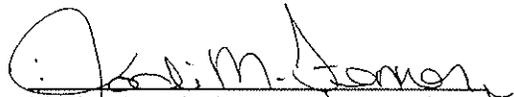
DUTTON-LAINSON COMPANY, Defendant,

By: 
David H. Fisher, #15052
Dunmire, Fisher & Hastings
202 Heritage Bank Bldg.
P.O. Box 1044
Hastings, NE 68902-1044

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Consent Decree has been served upon Defendant by regular United States mail, first class postage prepaid on this 21st day of ~~March~~ ^{May}, 2007 addressed to the Defendant's attorney of record as follows:

David H. Fisher, Attorney
Dunmire, Fisher & Hastings
202 Heritage Bank Bldg.
P.O. Box 1044
Hastings, NE 68902-1044


Katherine J. Spohn *Jodi M. Tenner*
Assistant Attorney General